

AMENDED IN ASSEMBLY AUGUST 19, 2016

AMENDED IN ASSEMBLY AUGUST 4, 2016

AMENDED IN ASSEMBLY JUNE 29, 2016

AMENDED IN SENATE MAY 31, 2016

AMENDED IN SENATE MARCH 15, 2016

SENATE BILL

No. 938

**Introduced by Senator Jackson
(Coauthor: Senator Wieckowski)**

February 2, 2016

An act to amend Section 2356.5 of the Probate Code, relating to conservatorships.

LEGISLATIVE COUNSEL'S DIGEST

SB 938, as amended, Jackson. Conservatorships: psychotropic medications *and* secured perimeter facilities.

Existing law authorizes a conservator to place a conservatee in a secured perimeter residential care facility for the elderly, as specified, or to authorize the administration of certain prescribed medications upon a court's finding that among other things, the conservatee has dementia and a functional impairment. Existing law requires certain findings to be made by the court for each type of authority sought by the conservator and requires a petition for authority to be supported by a declaration of a licensed physician or psychologist, as specified, regarding these findings.

This bill would replace references to the term dementia in these provisions with major neurocognitive disorders (MNCDS), as defined. The bill would require a petition requesting the authority to administer

psychotropic medications, as defined, to be supported by a declaration of a physician that includes specified information, including, among other things, the recommended course of medication, the expected effects of the recommended medication on the conservatee's overall mental health and treatment plan, including how the medication is expected to improve the conservatee's symptoms, and a description of the potential side effects of the recommended medication. The bill would revise the court findings required for placement in a secured perimeter facility. The bill would require the Judicial Council, on or before July 1, 2017, to adopt rules of court and develop appropriate forms for the implementation of these provisions, as specified. The bill would make related changes and additional findings and declarations of the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2356.5 of the Probate Code is amended
2 to read:
3 2356.5. (a) The Legislature hereby finds and declares:
4 (1) That conservatees with major neurocognitive disorders
5 (MNCDs), as defined in the last published edition of the
6 "Diagnostic and Statistical Manual of Mental Disorders," should
7 have a conservatorship to serve their unique and special needs.
8 (2) Common forms of MNCDs are known as Alzheimer's
9 disease, vascular dementia, dementia with Lewy bodies, Parkinson
10 dementia, frontotemporal dementia, and mixed dementia.
11 (3) That, by adding powers to the probate conservatorship for
12 conservatees with MNCDs, their unique and special needs can be
13 met, and the basic dignity and rights of the conservatee can be
14 safeguarded.
15 (4) Psychotropic medications can be misused for people with
16 MNCDs to control behavior that conveys pain, distress, or
17 discomfort and the administration of psychotropic medications
18 has been and can be abused by those who prescribe and administer
19 these medications.
20 (5) Since 2005, the federal Food and Drug Administration has
21 required the packaging of all antipsychotic medications, which
22 fall under a class of psychotropic medication, to contain a black

1 box warning label that the medication significantly increases the
2 risk of death for elderly people with MNCDs.

3 (6) Therefore, granting powers to a conservator to authorize
4 these medications for the treatment of a person with an MNCD
5 requires the additional protections specified in this section.

6 (b) For the purposes of this section, “MNCD” means a major
7 neurocognitive disorder, as defined in the latest published edition
8 of the “Diagnostic and Statistical Manual of Mental Disorders.”

9 (c) Notwithstanding any other law, a conservator may authorize
10 the placement of a conservatee in a secured perimeter residential
11 care facility for the elderly operated pursuant to Section 1569.698
12 of the Health and Safety Code, and which has a care plan that
13 meets the requirements of Section 87705 of Title 22 of the
14 California Code of Regulations, upon a court’s finding, by clear
15 and convincing evidence, of all of the following:

16 (1) The conservatee has an MNCD.

17 (2) The conservatee lacks the capacity to give informed consent
18 to this placement and has at least one mental function deficit
19 pursuant to subdivision (a) of Section 811, and this deficit
20 significantly impairs the person’s ability to understand and
21 appreciate the consequences of his or her actions pursuant to
22 subdivision (b) of Section 811.

23 (3) The conservatee needs or would benefit from a restricted
24 and secure environment, as demonstrated by evidence presented
25 by the physician or psychologist referred to in paragraph (3) of
26 subdivision (f).

27 (4) The proposed placement in a secured perimeter residential
28 care facility for the elderly is the least restrictive placement
29 appropriate to the needs of the conservatee.

30 (5) The secured setting is the choice of the conservator from
31 various setting options, as documented in the person-centered care
32 plan.

33 (d) Notwithstanding any other law, a conservator of a person
34 may authorize the administration of psychotropic medications to
35 a conservatee with an MNCD only upon a court’s finding, by clear
36 and convincing evidence, of all of the following:

37 (1) The conservatee has an MNCD.

38 (2) The conservatee lacks the capacity to give informed consent
39 to the administration of psychotropic medications for his or her
40 treatment and has at least one mental function deficit pursuant to

subdivision (a) of Section 811, and this deficit or deficits significantly impairs the person's ability to understand and appreciate the consequences of his or her actions pursuant to subdivision (b) of Section 811.

(3) The conservatee needs or would benefit from appropriate medication as demonstrated by evidence presented by the physician as provided in subdivision (f).

(e) Pursuant to subdivision (b) of Section 2355, in the case of a person who is an adherent of a religion whose tenets and practices call for a reliance on prayer alone for healing, the treatment required by the conservator under subdivision (d) shall be by an accredited practitioner of that religion in lieu of the administration of medications.

(f) A petition for authority to act under this section is governed by Section 2357, except:

(1) The conservatee shall be represented by an attorney pursuant to Chapter 4 (commencing with Section 1470) of Part 1. Upon granting or denying authority to a conservator under this section, the court shall discharge the attorney or order the continuation of the legal representation, consistent with the standard set forth in subdivision (a) of Section 1470.

(2) The conservatee shall be produced at the hearing, unless excused pursuant to Section 1893.

(3) The petition requesting authority under subdivision (c) shall be supported by a declaration of a physician, or a psychologist within the scope of his or her licensure, regarding each of the findings required to be made under this section for any power requested. The psychologist shall have at least two years of experience in diagnosing MNCDs.

(4) The petition requesting authority under subdivision (d) shall be supported by a declaration of a physician regarding each of the findings required to be made under this section for any power requested. The supporting declaration for a petition requesting authority under subdivision (d) shall also include all of the following:

(A) A description of the conservatee's diagnosis and a description of the conservatee's behavior.

(B) The recommended course of medication.

(C) A description of the pharmacological and nonpharmacological treatments and medications that have been

1 previously used or proposed, the less invasive treatments or
2 medications used or proposed, and why these treatments or
3 medications have not been or would not be effective in treating
4 the conservatee's symptoms.

5 (D) The expected effects of the recommended medication on
6 the conservatee's overall mental health and treatment plan,
7 including how the medication is expected to improve the
8 conservatee's symptoms.

9 (E) A description of the potential side effects of the
10 recommended medication, including any black box warnings issued
11 by the federal Food and Drug Administration as defined in Section
12 201.57(c)(1) of Title 21 of the Code of Federal Regulations.

13 (F) Whether the conservatee and his or her attorney have had
14 an opportunity to provide input on the recommended medications.

15 (5) On or before July 1, 2017, the Judicial Council shall adopt
16 rules of court and develop appropriate forms for the implementation
17 of this section, and shall provide guidance to the court on how to
18 evaluate the request for authorization, including how to proceed
19 if information, otherwise required to be included in a request for
20 authorization under this section, is not included in a request for
21 authorization submitted to the court.

22 (6) The petition may be filed by any of the persons designated
23 in Section 1891.

24 (g) The court investigator shall annually investigate and report
25 to the court every two years pursuant to Sections 1850 and 1851
26 if the conservator is authorized to act under this section. In addition
27 to the other matters provided in Section 1851, the conservatee shall
28 be specifically advised by the investigator that the conservatee has
29 the right to object to the conservator's powers granted under this
30 section, and the report shall also include whether powers granted
31 under this section are warranted. If the conservatee objects to the
32 conservator's powers granted under this section, or the investigator
33 determines that some change in the powers granted under this
34 section is warranted, the court shall provide a copy of the report
35 to the attorney of record for the conservatee. If no attorney has
36 been appointed for the conservatee, one shall be appointed pursuant
37 to Chapter 4 (commencing with Section 1470) of Part 1. The
38 attorney shall, within 30 days after receiving this report, do one
39 of the following:

1 (1) File a petition with the court regarding the status of the
2 conservatee.

3 (2) File a written report with the court stating that the attorney
4 has met with the conservatee and determined that the petition
5 would be inappropriate.

6 (h) If authority to administer psychotropic medications is granted
7 pursuant to subdivision (d), the conservator may change or adjust
8 psychotropic medications without further notice to, or approval
9 from, the court, provided that the change or adjustment is consistent
10 with the authority granted by the court *to administer psychotropic*
11 *medications for purposes of therapeutic treatment directly related*
12 *to the MNCD*, and the conservator has received information about
13 the risks, benefits, and *nonpharmacological* alternatives of the
14 proposed change or adjustment in advance of approving the change
15 or adjustment.

16 (i) If the authority to administer psychotropic medications is
17 granted pursuant to subdivision (d), the court shall review the grant
18 of authority as part of its periodic review conducted pursuant to
19 Section 1850.

20 (j) A petition to terminate authority granted under this section
21 shall be governed by Section 2359.

22 (k) Nothing in this section shall be construed to affect a
23 conservatorship of the estate of a person who has an MNCD.

24 (l) Nothing in this section shall affect the laws that would
25 otherwise apply in emergency situations.

26 (m) Nothing in this section shall affect current law regarding
27 the power of a probate court to fix the residence of a conservatee
28 or to authorize medical treatment for any conservatee who has not
29 been determined to have an MNCD.

30 (n) For purposes of this section, “psychotropic medications”
31 includes, but is not limited to, anxiolytic agents, antidepressants,
32 mood stabilizers, antipsychotic medications, hypnotics, and
33 psychostimulants. “Psychotropic medications” does not include
34 medications approved by the federal Food and Drug Administration
35 for the treatment of an MNCD or anti-Parkinson agents.

36 (o) This section shall not apply to a conservatee who is
37 prescribed a psychotropic or antipsychotic medication by a
38 physician in an acute care hospital setting or for purposes of
39 diagnosis or therapeutic treatment not directly related to the
40 MNCD, including, but not limited to, sedation prior to an invasive

1 procedure or nausea prevention or relief. In those circumstances,
2 the informed consent of the conservator may be obtained pursuant
3 to the authority granted under Section 2355.

O